



Legislative Bulletin.....March 26, 2012

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H.R. 2779 - To exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended (Stivers, R-OH)

Order of Business: The bill is scheduled to be considered on Monday, March 26, 2012, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 2779 exempts swap transactions between affiliated entities from most of the swap requirements mandated by the Dodd-Frank Act. The following summarizes the legislation.

- The legislation amends Section 1(a)(47) of the Commodity Exchange Act, as added by Section 721(a)(21) of the Dodd-Frank Act, by stating that the term “swap” is not considered a “swap” as defined under Dodd-Frank so long as the transaction is between a party that is controlling, controlled by, or under common control with its counterparty. This legislation also requires that all swaps defined under the Act shall be reported to a swap data repository, or if one does not exist, to the Commodity Futures Trading Commission within a time period to be prescribed by the Security and Exchange Commission (SEC).
- This legislation also amends Section 3(a)(68) of the Securities Exchange Act of 1934, as added by Section 761(a)(6) of the Dodd-Frank Act, by stating that the term “security-based swap” is not considered a “security-based swap” for purposes of clearing and execution requirements; any applicable margin and capital requirements; defining a security-based swap dealer or a major security-based swap participant; and reporting requirements other than the requirement

that all transactions be reported to a security-based swap data repository or to the SEC within a time period to be prescribed by the Commission.

- The legislation also preserves the power to regulate security-based swap transactions under Sections 23A and 23B of the Federal Reserve Act. The bill also provides for protection of federal and state regulators of insurance and guaranty funds to exercise their existing authority to protect the integrity of a fund, except that such regulator shall not have the ability to subject security-based swaps to clearing and execution requirements, any applicable margin and capital requirements, or any reporting requirements established under the Dodd-Frank Act other than the reporting requirements already set forth in this section. Additionally, the legislation allows the SEC to prescribe rules to govern security-based swaps to prevent transactions from being structured as an affiliate transaction for the purposes of avoiding regulation under the Dodd-Frank Act.

Background: CBO defines a “Swap” as a contract that calls for an exchange of cash between two participants, based on an underlying rate or index or the performance of an asset. The most common forms of swaps are interest rate swaps, currency swaps, credit swaps, commodity swaps and equity swaps. According to the [Committee Report](#):

“Inter-affiliate swaps are swaps and security-based swaps executed between entities under common corporate ownership. H.R. 2779 exempts inter-affiliate swaps and security-based swap trades from many of the regulations in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (PL 111-203) that are designed to mitigate risks associated with so-called ‘market-facing trades,’ where a corporation executes a derivatives transaction with an investment bank or other entity, which may be either a swap dealer or security-based swap dealer.”

“Inter-affiliate swaps allow a company with subsidiaries and affiliates to better manage risk by transferring the risk of its affiliates to a single affiliate and then executing swaps through that affiliate. Inter-affiliate swaps do not pose a systemic risk because they do not create additional counterparty exposures or increase the interconnectedness between parties outside the corporate group. Currently, companies use inter-affiliate swaps to combine positions and centrally hedge risk. This is accomplished by executing most or all of its external swaps or security-based swaps through a single or limited number of affiliates.”

Despite the significant differences between inter-affiliate swaps and swaps between unrelated parties, the Dodd-Frank Act treats these swaps the same, which needlessly increases the cost of hedging risk for end-users.”

Committee Action: H.R. 2779 was introduced on August 1, 2011 by Rep. Steve Stivers, and was referred to the House Financial Services Committee. The House Financial Services Committee reported and amended the bill on December 23, 2011. The legislation was also referred to the Committee on Agriculture. On February 8, 2012 the

bill was reported and amended by the Committee on Agriculture and placed on the union Calendar.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the CBO letter, “CBO estimates that any change in discretionary spending to implement the legislation, which would be subject to the availability of appropriated funds, would not be significant. Enacting H.R. 2779 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 2779 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: According Rep. Stiver’s statement of constitutional authority, “Congress has the power to enact this legislation pursuant to the following: The bill is enacted pursuant to the power granted to Congress under Clause 3 of Section 8 of Article I of the United States Constitution.”

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H.R. 2682 - Business Risk Mitigation and Price Stabilization Act of 2011, as amended (Grimm, R-NY)

Order of Business: The bill is scheduled to be considered on Monday, March 26, 2012, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 2682 exempts end-users from the margin and capital requirements under Title VII of the Dodd-Frank Act for swaps and security-based swap transactions that are not made with financial entities as defined under the Dodd-Frank Act. Current law specifies margin requirements for both bank and non-bank swap dealers unless the swaps are cleared by a registered derivatives clearing organization.

Background: According to the committee report:

“End-users” are companies that use derivatives to hedge their business risk. Because end-users’ swap and security-based swap transactions do not pose a

systemic risk to the financial system, Congress did not intend that end-user derivatives transactions would be subject to the margin and capital requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) (the Dodd-Frank Act). Despite Congressional intent and the statute's plain language, some regulators have interpreted Title VII as a grant of new authority to impose margin requirements on end-users merely because they are counterparties to swaps with a regulated entity, such as a swap dealer or financial institution.

Committee Action: H.R. 2682 was introduced on July 28, 2011 by Rep. Michael Grimm, and referred to the House Financial Services Committee. The House Financial Services Committee reported the bill on December 23, 2011. The legislation was also referred to the Committee on Agriculture. On February 8, 2012 the bill was reported and amended by the Committee on Agriculture and placed on the union Calendar.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the CBO letter, “CBO estimates that any change in discretionary spending to implement the legislation, which would be subject to the availability of appropriated funds, would not be significant. Enacting H.R. 2682 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 2682 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 2682 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: According Rep. Grimm’s statement of constitutional authority, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3

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**H.R. 4014 - To amend the Federal Deposit Insurance Act
with respect to information provided to the Bureau of
Consumer Financial Protection
(Huizenga, R-MI)**

Order of Business: The bill is scheduled to be considered on Monday, March 26, 2012, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 4014 amends Section 11(t)(2)(A) of the Federal Deposit Insurance Act (the Act) by adding the Consumer Financial Protection Bureau (CFPB) to the list of covered agencies that may share information with other covered or federal agencies without waiving any privilege applicable to the information. The other covered agencies currently include any federal banking agency, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the National Credit Union Administration, the Government Accountability Office, and the Federal Housing Finance Agency.

The bill also amends Section 18(x) of the Act to reemphasize that the submission by any person of any information to the CFPB in the course of any supervisory or regulatory process does not waive, destroy, or otherwise affect any privilege the person may claim with respect to third parties.

Background: According to the [Committee Report](#):

“Many supervised institutions have expressed concern that providing the CFPB privileged information could waive the institutions' privilege with respect to third parties. In response to these concerns, the CFPB stated in a bulletin that it would take reasonable and appropriate actions to assist supervised institutions in rebutting any claim that they have waived privileges by providing information to the CFPB. The CFPB has also issued a proposed rule stating that any person who submits information to the CFPB has not waived any applicable privileges. The proposed rule even provides that no waiver occurs when the CFPB shares privileged information with any state or federal agency. Richard Cordray of the CFPB has also expressed support for a legislative clarification.”

Committee Action: H.R. 4014 was introduced on February 23, 2012 by Rep. Bill Huizenga, and referred to the House Financial Services Committee. The House Financial Services Committee reported the bill on March 20, 2012 and placed the bill on the union Calendar.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the CBO letter, “CBO estimates that enacting this legislation would have no impact on the federal budget; therefore, pay-as-you-go procedures do not apply.”

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: H.R. 4014 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 4014 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Rep. Huizenga 's statement of constitutional authority states: "Congress has the power to enact this legislation pursuant to the following: In keeping with the Rules of the House of Representatives, Amendment X is cited as delegating to the states or to the people all ``powers not delegated to the United States by the Constitution."

Additionally, Article I, Section 8, Clause 18: The Congress shall have Power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof."

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H.R. 3298 - Homes for Heroes Act of 2011 (Green, D-TX)

Order of Business: The bill is scheduled to be considered on Monday, March 26, 2012, under a motion to suspend the rules and pass the legislation.

Summary: H.R. 3298 establishes the position of Special Assistant for Veterans Affairs in the Department of Housing and Urban Development (HUD). The special assistant would be responsible for ensuring veterans fair access to HUD housing and homeless assistance programs; coordinating all HUD programs and activities relating to veterans; and serving as a HUD liaison with the Department of Veterans Affairs (VA). The legislation also requires HUD and the VA to submit an annual report regarding veterans' homelessness and the effects of housing assistance programs.

Committee Action: H.R. 3298 was introduced on November 1, 2011, and was referred to the House Committee on Financial Services. On December 8, 2011 the bill was considered and marked-up by the Subcommittee on Insurance, Housing and Community Opportunity Prior to Referral. H.R.3298 was favorably reported to the full committee on December 8, 2011.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: A report from CBO is unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation adds a new position to the Department of Housing and Urban Development.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The legislation contains no earmarks.

Constitutional Authority: Rep. Green’s statement of constitutional authority states: “Congress has the power to enact this legislation pursuant to the following: The Constitutional authority to enact this legislation can be found in: General Welfare Clause (Art. 1 Sec. 8 Cl. 1), Commerce Clause (Art. 1 Sec. 8 Cl. 3).”

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H.R. 4239 - Surface Transportation Extension Act of 2012 (Mica, R-FL)

Order of Business: The resolution is scheduled to be considered on Monday, March 26, 2012, under a motion to suspend the rules and pass the resolution.

Summary: H.R. 4239 extends programs under the Highway Trust Fund by three months (through June 30, 2012). The bill authorizes continued funding for the various programs at close to the same levels as provided in FY 2011. The legislation does not make any substantial changes to the current transportation program. The legislation provides contract authority for the covered programs, and extends the authority to spend money from the Highway Trust Fund, through the end of June 2012. Highlights are listed below.

Surface Transportation Extension

The amounts authorized to be appropriated would be calculated by accounting for any rescission or cancellation of funds or contract authority in FY 2011, including in the full-year continuing appropriations act. The bill authorizes appropriations equal to three-fourths of the FY 2011 amount authorized for federal-aid highway programs, research, and planning under SAFETEA-LU for the period starting Oct. 1, 2011 and ending June 30, 2012. The following are some examples of specific authorization amounts for programs in the Highway Trust Fund FY 2011:

Highway Programs

- The legislation sets an obligation limit of \$39.1 billion for federal-aid highway programs.
- The legislation extends authorizations for surface transportation research, education, and statistics programs for the three-month period through June 30, 2012.

- The bill exempts from the obligation limit \$479 million for the first three quarters of FY 2012 for the equity bonus programs. The equity bonus programs ensure that states receive a certain portion of the gasoline taxes they contribute to the federal highway funds. The legislation requires that the distribution of a state's "bonus" funds is appropriated through the highway formula programs. It stipulates that the distribution of a state's allocation for certain highway formula programs would be determined by three-fourths the amount made available for programs in FY 2011 under SAFETEA-LU.
- The measure authorizes \$295 million from the Highway Trust Fund for the administrative costs of the federal highway program for the first three quarters of FY 2012.

Highway Safety Programs

- The bill authorizes \$499 million for the period of Oct. 1, 2011, through June 30 for highway-safety programs administered by the National Highway Traffic Safety Administration.
- The bill authorizes \$448 million for the period beginning October 1, 2011, and ending on June 30, 2012, for truck-safety activities of the Federal Motor Carrier Safety Administration.
- The bill extends the authorization for hazardous-materials research projects under the Pipeline and Hazardous Materials Safety Administration.
- The bill extends authorization for sport fish conservation and management programs under the Dingell-Johnson Sport Fish Restoration Act.

Transit Programs

- The bill allows for the obligation of up to \$7.8 billion for transit programs administered by the Federal Transit Administration.
- The measure authorizes \$6.3 billion for formula and bus grants.
- The bill authorizes \$1.5 billion for capital investment grants.
- The bill authorizes \$33 million for research and university centers.
- The bill authorizes \$74 million for Federal Transit Administration administrative costs.
- The bill extends the allocation requirements for funds that go to transportation planning programs. The legislation stipulates that 83% of the funds will be available for the metropolitan planning programs, and 17% will be available for state planning programs.
- The legislation extends the allocation amounts for certain capital investment grants, formula grants, and research and technology programs.
- The bill extends the authorizations for fixed guide-way capital projects in dozens of designated cities.
- The legislation extends pilot programs related to contracted paratransit pilots, public-private partnerships, and elderly and disabled individuals.

- The bill extends a special rule for urbanized area formula grants that allows the Transportation Department to finance the operating cost of equipment and facilities for use in public transportation in an urbanized area with a population of at least 200,000.

Potential Conservative Concerns: For years, conservatives have asserted that the Highway Trust Fund is on an unsustainable path. Many conservatives believe that the solution to this problem is to reprioritize spending on actual highways, instead of relying on either tax increases or deficit spending to maintain funding for non-highway, non-federal items. Some of the programs that are extended by this legislation are, in the view of some conservatives, examples of programs that should not be funded by the Highway Trust Fund. Many conservatives also argue that the states should be given more flexibility in spending transportation dollars. Many conservatives believe that most (if not all) of the highways program should be devolved to the states. See, for example, legislation by Rep. Lankford (H.R. 1585), Rep. Tom Graves (H.R. 3264), and Rep. Scott Garrett (H.R. 1737).

Additionally, many conservatives may be concerned that this bill, while not increasing spending, also does not cut spending.

Background: The last long-term authorization for highway, transit and safety programs was passed in 2005 and is known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The legislation expired Sept. 30, 2009. The federal highway programs and certain transit programs are directly funded through contract authority provided in authorizing legislation unlike other federal programs, to which new federal funding can be provided through appropriations measures without prior authorization. The current surface transportation authorities expire March 30, 2012 and were last extended in September 2011.

Committee Action: H.R. 4239 was introduced by Rep. John Mica (R-FL) on 3/22/2012. The legislation was referred to the Committees on Transportation and Infrastructure; Ways and Means; Natural Resources; Science, Space, and Technology; and Energy and Commerce.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: No Congressional Budget Office cost estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A committee report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available.

Constitutional Authority: According to Rep. Mica, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 1, Clause 3, and Clause 18.”

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